



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

# BOOK REVIEWS

CHARLES W. MCCLUMPHA, *Editor-in-Charge*

BRITISH WAR ADMINISTRATION. By JOHN A. FAIRLIE. New York: OXFORD UNIVERSITY PRESS. 1919. pp. x, 302.

In no other war of modern times were the governments of the belligerent nations so greatly affected in organization and function as in the World War. Many things had to be done that were novel, and for doing them old governmental ways and means often proved themselves unfit. Unmilitary nations were forced to militarize, and a new calculus of "man power" and "mobilization" was applied to men and women and the fruits of their industry. The sphere of the state was vastly enlarged and its control extended to much that before had been left to private enterprise. New political agencies, better suited to the necessities of the crisis, were devised, and old guaranties of liberty were—enthusiastically or reluctantly—put aside.

Of all the Allied governments no other, with the exception of the Russian, experienced such a transformation as that of Great Britain. A well known student of English history and politics, writing in the summer of 1918, went so far as to say that the political changes effected during the preceding twenty months were "more fundamental than any which had occurred in the previous hundred years." Among the more salient of these changes were the establishment of universal manhood suffrage, the admission of some 6,000,000 women to the parliamentary franchise, the introduction of the principle of proportional representation in parliamentary elections, a revolution in the cabinet system, the creation of new departments of government, the reorganization of old departments and the suspension of that "rule of law" which is the pride of the race.

The story of this metamorphosis as a whole has not yet been told. A part of it, however, is related by Professor John A. Fairlie in his *British War Administration*, which is published as one of a series of "Preliminary Economic Studies of the War", edited by Professor David Kinley for the Division of Economics and History of the Carnegie Endowment for International Peace. Though disposed to question the appropriateness of this volume in a series of "economic" studies, we are none the less grateful to the author, the editor and the Endowment for supplementing the standard treatises on English government and constitutional history, all of which have been thrown out of date by the war.

The study deals principally with administrative reorganization and the establishment of new executive departments. The chapter, however, of most general interest and importance for the student of what Sir William Anson called "the custom of the constitution" is that on the Cabinet. This is based upon an article by the author which was published in the *Michigan Law Review* for May, 1918. After tracing briefly the changes in the cabinet system under the Coalition Government of 1915-1916, Professor Fairlie makes it clear that the Lloyd

George War Cabinet, established in December, 1916, involved "fundamental alterations in the structure of the Cabinet and in its relations to the House of Commons." The old cabinet, composed of the heads of the administrative departments, disappeared, and there was substituted for it a cabinet of a new type, much smaller in size, and consisting of ministers holding nominal offices which required of them no departmental work and "ministers without portfolio". The only active administrator in it was the Chancellor of the Exchequer, and his official and parliamentary duties soon forced him to relinquish most of his cabinet activities. The new system thus undertook to separate the functions of determining policy and directing administration. The War Cabinet, moreover, was far less intimately connected than the old cabinet with the House of Commons. The Prime Minister ceased to be the leader of the House and rarely attended its debates. The author seems to regard the responsibility of the War Cabinet to the House of Commons as little more than nominal, and he is probably right—at least for the period of actual hostilities with which he is concerned. Unlike all of its predecessors the War Cabinet employed a secretarial staff which kept records of proceedings, and it summoned outsiders to its meetings. It thus abandoned that secrecy which had been maintained by all previous cabinets in English history. The author shows how it was enlarged in the summer of 1917 into an Imperial War Cabinet by the admission of representatives of the governments of the Dominions and of India, and says that a second session, held in the summer of 1918, "marks another step towards establishing annual meetings of this kind as a recognized convention of the British imperial constitution." He indicates that the War Cabinet was not wholly successful. It was not able to confine itself entirely to questions of policy, and the effort to distinguish sharply between policy and administration seems to have failed. Since Professor Fairlie wrote, criticisms of the War Cabinet culminated in a parliamentary crisis in October, 1919, in consequence of which it was abandoned and a new Cabinet was constructed, which, though it does not reproduce all of the features of the pre-war cabinet, includes the heads of the most important departments.

The student of English constitutional law will be impressed in reading Professor Fairlie's chapter, "Defence of the Realm", by the departures which it recounts from what Dicey in a classic chapter calls "the rule of law" (*Introduction to the Study of the Law of the Constitution*, chap. iv.), one essential principle of which is "that no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land." In his treatment of martial law, while recognizing, of course, the possible necessity for it, Dicey says: "The justification and the source of the exercise in England of extraordinary, or as it may be termed, extra-legal power, is always the necessity for the preservation or restoration of the King's peace", and quotes as expressive of English law the opinion of the United States Supreme Court in *ex parte Milligan* that "martial rule can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction." The Defence of the Realm Act of August 8, 1914, passed without debate, empowered the Government, as Professor Fairlie shows, to issue regulations for securing public safety and the defence of the realm, and by such regulations to authorize the trial by courts-martial of persons contravening them, such punishment not to include the death sentence. The Defence of the Realm Consolidation Act of November

27, 1914, went farther and provided that when it was found that the offence was committed with intent to assist the enemy, "a person convicted of such an offence by a court-martial shall be liable to suffer death"—and this though the ordinary courts were in normal session. It would be difficult to conceive of a more flagrant violation of the "rule of law", and it did not pass unchallenged. On the contrary, it encountered spirited opposition in the House of Lords. "What we want", said Lord Bryce, "is to safeguard the liberties of our fellow-citizens in the future from the possibility of its ever being said hereafter that Parliament intrusted Courts-Martial with the jurisdiction of life and death over British subjects at a time when there was neither invasion nor civil war." So determined was the opposition of the Lords that the Lord Chancellor gave a pledge that no British subject, not under military law, would, in fact, be deprived of life under this provision until Parliament had had time to consider the matter again. With this understanding—of which Professor Fairlie, by the way, makes no mention—the bill was passed.

In an account such as the author has prepared—professedly a preliminary report—one does not look for interpretation, but he has a right to demand strict accuracy in the statement of fact. In the chapter on the Cabinet a number of errors have been noted. Mr. Bonar Law did not retire from the War Cabinet in July, 1917, as stated on pages 40, 50 and 53. As a matter of fact Mr. Law continued to be a member of the War Cabinet as long as it lasted. Lord Milner did not retire in May, 1918, as stated on page 53, where mention is omitted of the resignation of Sir Edward Carson in January, 1918. The author does not seem to have understood the position of General Smuts in the War Cabinet, and his name is not included in the list of its members given on page 53. On the whole, however, Professor Fairlie has done with credit a piece of work that was eminently worth doing.

*R. L. Schuyler.*

THE RENOVATION OF INTERNATIONAL LAW. By PROF. DR. D. JOSEPHUS JITTA. The Hague: MARTINUS NIJHOFF. 1919. pp. xvi, 196.

The author proposes the renovation of international law on the basis of a "juridical community of mankind" as distinguished from the community of nations. He seems first to have conceived this idea in the study of what is variously called "Private International Law," "International Private Law," and "the Conflict of Laws," which is not international in the sense of being a law between nations, except so far as conventional agreements for the observance of certain rules have to a very slight extent made it so.

To extend this conception to what is properly called "International Law" evidently involves a radical change rather than a renovation. The author treats sovereignty as belonging to "mankind" and regards state sovereignty as admissible only as "an immediate tenure of mankind." Absolutely separating from international law the "positive law of war", the rules of which cannot, he affirms, be deduced from "reasonable principles of social life", he would bring everything else to the test of such principles. In order that he may not be called a "dreamer", he concedes that "the reasonable principles of social life are absolutely subordinated to the positive customary or written law," but he maintains, on the other hand, that they "are also the touchstone of the